

Hearing Date: October 7, 2025 at 10:00 a.m.

Opposition Deadline: August 29, 2025

Reply Deadline: September 26, 2025

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

EQUILIBRE BIOPHARMACEUTICALS CORP.,

Debtor.

Chapter 7

Case No. 23-12099 (PB)

GREGORY M. MESSER, Solely in His Capacity as
Chapter 7 Trustee of the Estate of Equilibre
Biopharmaceuticals Corp.,

Plaintiff,

Adv. Proc. No. 25-01087 (PB)

v.

SAMUEL WAKSAL, individually, as the former
Chairperson, Chief Executive Officer, and President of
Equilibre Biopharmaceuticals Corp. Chairperson, and
Chief Executive Officer and President of Graviton
Bioscience Corporation, Graviton Bioscience Holding
Corporation, Graviton US Corp. (USA), and Graviton
Bioscience B.V., FRANCOIS MAISONROUGE, RUI
WU, PETER SIMON, GRAVITON BIOSCIENCE
CORPORATION, GRAVITON BIOSCIENCE
HOLDING CORPORATION, GRAVITON US CORP.
(USA), GRAVITON BIOSCIENCE B.V., BIHUA
CHEN,

Defendants.

DECLARATION OF JONATHAN M. WAGNER, ESQ.

1. I, Jonathan M. Wagner, am an attorney in good standing to practice law in the State of New York. I am a partner at Herbert Smith Freehills Kramer (US) LLP, counsel to Defendants Francois Maisonrouge and Peter Simon (“Defendants”) in this adversary proceeding. I submit this declaration, in support of Defendants’ Motion to Dismiss the

Complaint filed by Gregory M. Messer as Trustee of the Estate of Equilibre Biopharmaceuticals Corp.

2. Attached as Exhibit A is a true and correct copy of the Certificate of Incorporation of Equilibre Newco A Corp., a Delaware Corporation. Equilibre Newco A Corp. was subsequently renamed Equilibre Biopharmaceuticals Corp.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
July 21, 2025

/s/ Jonathan M. Wagner
Jonathan M. Wagner

EXHIBIT A

**CERTIFICATE OF INCORPORATION
OF
EQUILIBRE NEWCO A CORP.**

ARTICLE I

The name of this corporation is Equilibre Newco A Corp. (the “*Corporation*”).

ARTICLE II

The name and address of the registered agent for service of process of the Corporation in the State of Delaware is The Corporation Trust Company, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801.

ARTICLE III

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the Delaware General Corporation Law (the “*DGCL*”).

ARTICLE IV

This Corporation is authorized to issue one class of stock to be designated “Common Stock.” The total number of shares which the Corporation is authorized to issue is 15,000,000 shares, all of which shall be Common Stock, par value \$0.0001 per share.

ARTICLE V

A. ***Limitation of Director’s Liability.*** To the fullest extent permitted by the DGCL, as the same exists or may hereafter be amended, a director of this Corporation shall not be personally liable to this Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director.

B. ***Indemnification of Directors and Officers.*** To the fullest extent permitted by applicable law, this Corporation is authorized to provide indemnification of, and advancement of expenses to, directors, officers, employees and other agents of this Corporation and any other persons to which the DGCL permits this Corporation to provide indemnification.

C. ***Repeal or Modification.*** Any repeal or modification of this Article V, by amendment of such section or by operation of law, shall not adversely affect any right or protection of a director, officer, employee or other agent of this Corporation existing at the time of, or increase the liability of any such person with respect to any acts or omissions in their capacity as a director, officer, employee, or other agent of the corporation occurring prior to, such repeal or modification.

ARTICLE VI

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred on stockholders herein are granted subject to this reservation.

ARTICLE VII

Election of directors at an annual or special meeting of stockholders need not be by written ballot unless the Bylaws of the Corporation shall so provide.

ARTICLE VIII

Except as otherwise provided in this Certificate of Incorporation, in furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, repeal, alter, amend and rescind any or all of the Bylaws of the Corporation.

ARTICLE IX

Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation; (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation's stockholders; (iii) any action asserting a claim arising pursuant to any provision of the DGCL; or (iv) any action asserting a claim governed by the internal affairs doctrine. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice or and to have consented to the provisions of this Article IX.

ARTICLE X

The name of the Corporation's incorporator is Elizabeth Bordenave, and the incorporator's mailing address is Shearman & Sterling LLP, 111 Congress Avenue, Suite 1700, Austin, Texas 78701.

* * * * *

IN WITNESS WHEREOF, this Certificate of Incorporation has been signed by the incorporator of the Corporation on this 15th day of October, 2020.

By: /s/Elizabeth Bordenave
Elizabeth Bordenave
Incorporator